(1) FILED

No. 97 1143 DEC 3 0 1997

OFFICE OF THE CLERK

United States Supreme Court

October Term, 1997

In re:

T. CARLTON RICHARDSON,
Petitioner.

On Petition for Writ of Certiorari
to the
District of Columbia Court of Appeals

PETITION FOR WRIT OF CERTIORARI AND APPENDIX

T. CARLTON RICHARDSON
Petitioner, *Pro Se*
1505 Pennsylvania Avenue, SE
Washington, DC 20003-3117
(202) 347-4466

68 pp

QUESTIONS FOR REVIEW

I.

Whether the Due Process Clause of the 5th Amendment is violated where procedures used to impose interim suspension and 22 months later to impose the final suspension of petitioner's license to practice law in the District of Columbia lacked the requisite notice and hearing mandated constitutionally and by D.C. Code Section 11-2503(b) prior to any suspension of an attorney in non-emergency situations?

II.

Whether the Due Process Clause of the 5th Amendment is violated where petitioner's resignation of the Florida Bar was considered ex post facto as the "functional equivalent" of a suspension under D.C. Bar Rule XI, Section 11(d) thereby permitting automatic interim suspension of his licence to practice law in the District of Columbia?

III.

Whether the equal protection rights of petitioner, a District of Columbia resident, under the Privilege and Immunities Clause of Article IV, Section 2 were violated where his automatic interim suspension in a non-emergency situation under D.C. Bar Rule IX, Section 11(d) differed from an automatic suspension in an emergency situation under D.C. Bar Rule IX, Section 3(c) in that under an emergency situation a suspended attorney is allowed to continue practicing on existing cases pending a prompt postsuspension hearing and in a non-emergency situation such a practice restriction or hearing right does not exist?

LIST OF PARTIES

Involved in these certiorari proceedings are the following parties:

Petitioner

T. CARLTON RICHARDSON

Respondent

DISTRICT OF COLUMBIA COURT OF APPEALS

TABLE OF CONTENTS

	Page
Questions for Review	i
List of Parties	ii
Table of Contents	iii
Table of Authorities	v
Decisions for Review	1
Jurisdictional Statement	2
Statutory Provisions Involved	2
Statement of Case	3
I. Introduction	3
II. Background	4
III. Raising Federal Questions	9
Reasons for Writ	10
I. Introduction	10
II. Application of Writ Review Standards	12
A. Conflict with Decisions of this Court and Every Other State and Federal Court in the Nation, including Respondent's Own Decisions	12
1. Insufficiency of Notice and Lack of Hearing	12
2. Bar Regulation is Vague and Has Invalid Presumptions	16
3. Equal Protection Rights Denied	19
B. Unacceptable Departure from Established Norms Governing the Administration of Justice Nationally	20

1. Respondent's Lack of Jurisdiction..... 20
2. Due Process Denied..... 21

III. Conclusion/Relief Requested..... 29

APPENDIX

Table of Contents..... i
I. Relevant State Court Decisions..... 1
II. Statutory Provisions Involved..... 25

TABLE OF AUTHORITIES

*—Authorities principally relied upon.

I. Statutes

Art. IV., Sec. 1—24
Art. IV., Sec. 2—2
5th Amd., U.S. Const.—i, 2
14th Amd., U.S. Const.—2

28 U.S.C., Sec. 1257—1

S.Ct.R. 13(1)—1
S.Ct.R. 13(3)—1

D.C. Code Sec. 11-2500, et seq.—5
D.C. Code Sec. 11-2501(a)—2
*D.C. Code Sec. 11-2503(b)—i, 2, 17, 21, 25

D.C. Bar R. XI, Sec. 3(c)—2, 19, 27
D.C. Bar R. XI, Sec. 11(b)—5
D.C. Bar R. XI, Sec. 11(c)—23
D.C. Bar R. XI, Sec. 11(d)—i, 2, 6, 21, 26, 27
D.C. Bar R. XI, Sec. 11(e)—2
Order re Amendments to D.C. Bar Rule XI on Disciplinary Proceedings, No. M-167-88, —A.2d— (D.C., 09/01/89)—25

II. Cases

Ali Baba Co., Inc. v. Wilco, Inc.—24
482 A.2d 418 (D.C., 1984)
*Arnett v. Kennedy—13
416 U.S.134, 94 S.Ct. 1633 (1974)

*Boddie v. Connecticut—24
401 U.S. 371, 91 S.Ct. 780 (1971)

Board of Education v. Lauderhill—25
470 U.S. 532, 105 S.Ct. 1487 (1985)
*Barry v. Barchi—3, 14, 21
433 U.S. 55, 99 S.Ct. 2642 (1979)
*Bell v. Burton—12
402 U.S. 535, 91 S.Ct. 1586 (1972)
Brookhart v. Janis—25
384 U.S. 1, 86 S.Ct. 1245 (1966)
Burleigh v. State Bar of Nevada—27
643 P.2d 1201 (Nev., 1982)

*Davis v. Scherer—12
468 U.S. 183, 104 S.Ct. 3012 (1984)

Ex parte Garland—12
4 Wall 333, 18 L.Ed. 366 (1867)

Florida Bar v. Richardson—5
No. 80,073, —So.2d— (1992)
*Fuentes v. Shevin—14, 23, 25
407 U.S. 67, 92 S.Ct. 1983 (1972)

*Gilbert v. Homar—3, 14, 21
—U.S.—, 117 S.Ct. 1807 (1977)

*In re Cummings—12
466 A.2d 1124 (D.C., 1983)
*In re Laughlin—20
474 F.2d 444 (U.S. App. D.C., 1972),
cert den. 412 U.S. 941, 93 S.Ct. 2784
(1973)
In re Richardson—1, 9, 21, 22
692 A.2d 427 (D.C., 1997)
*In re Ruffalo—15, 16
390 U.S. 544, 88 S.Ct. 1222 (1968)

Johnson v. Zerbst—25
304 U.S. 458, 58 S.Ct. 1019 (1938)
Joint Anti-Fascist Comm. v. McGrath—14
341 U.S. 123, 71 S.Ct. 624 (1951)

Kline v. Burke Const. Co.—20
260 U.S. 226, 43 S.Ct. 79 (1922)

*Laughlin v. Wheat—12, 18, 21
68 App. D.C. 190, 95 F.2d 101 (1937)
*Leary v. United States—17
395 U.S. 6, 89 S.Ct. 1532 (1969)
Leis v. Flynt—12
439 U.S. 438, 99 S.Ct. 698 (1979)
*Lindsley v. Natural Carbonic Gas Co.--19
220 U.S. 61, 31 S.Ct. 337 (1911)

*Matter of Colson--20
412 A.2d 1160 (D.C., 1979)
Metro Invest. Corp. v. Gross—25
161 A.2d 832 (D.C., 1963)
Missouri v. Canada—24
305 U.S. 337, 59 S.Ct. 232 (1938)

Phillips v. Ballinger—12
37 App. D.C. 190, 95 F.2d 101 (1937)

Selling v. Radford—12
243 U.S. 46, 37 S.Ct. 377 (1917)

Tot v. United States—17
319 U.S. 463, 63 S.Ct. 1241 (1943)

United States ex rel. Wedderburn v. Bliss—12
12 App. D.C. 485 (1898)
United States v. Good Real Property—23
510 U.S. 43, 114 S.Ct. 492 (1993)

Waskey v. Hammer—21
223 U.S. 85, 32 S.Ct. 187 (1912)
Wolff v. McDonnell—13
418 U.S. 539, 94 S.Ct. 2963 (1974)
World-Wide Volkswagen Corp. v. Woodson—21
444 U.S. 286, 100 S.Ct. 559 (1980)

*Zauderer v. Office of Disciplinary Enforcement Counsel, Supreme Court of Ohio—16
471 U.S. 626, 105 S.Ct. 2265 (1985)

III. Other References

*Anno., "Suspension or revocation of medical or legal professional license as violating due process--federal cases", 98 L.Ed. 852 --12

DECISIONS FOR REVIEW

For review are presented two orders imposing interim suspension entered June 25, 1995 and March 12, 1996 and a final judgment imposing the discipline of suspension decided April 17, 1997 and reported at 692 A.2d 427 (D.C., 1997) in the reciprocal disciplinary case, In re T. Carlton Richardson, No. 95-BG-639, rendered by respondent District of Columbia Court of Appeals. They are set-out in the Appendix at pages 1, 3, 5 respectively.

JURISDICTIONAL STATEMENT

Jurisdiction of the U.S. Supreme Court to review a final judgment or order rendered by the highest court of State, which includes the District of Columbia Court of Appeals, is by grant of a timely filed petition for writ of certiorari where it is alleged that a right, privilege or immunity of a petitioner secured under the Constitution or laws of the United States has been violated. See, 28 U.S.C. Sec. 1257 A petition for writ of certiorari must be filed within 90 days of the entry of the State court's final judgment or order sought to be reviewed, or, if timely filed, the disposition of a petition for rehearing, whichever is greater. See, S.Ct.R. 13(1) and 13(3)

Petitioner alleges that the interim orders and the final judgment sought to be reviewed here involving his automatic interim and final suspensions from the practice of law in the District of Columbia were imposed under procedures which violated his due process and equal protection rights secured under the Constitution and laws of the United States. This Petition for Writ of Certiorari is filed by the petitioner within 90 days of the entry of a final order denying a timely filed motion for rehearing [see, Appx. 24] of a final judgment entered on November 11, 1997 by the District of Columbia Court of Appeals in In re T. Carlton Richardson, No. 95-BG-639, reported at 692 A.2d 427

and decided April 17, 1997. See, Appx. 5. Jurisdiction of the Court has been properly invoked to consider a review of the interim disciplinary orders and final disciplinary judgment rendered by the D.C. Court of Appeals in this case.

STATUTORY PROVISIONS INVOLVED
(Constitution, Statutes, Regulations/Rules)

Reproduced in the Appendix beginning at page 25 are the relevant federal constitutional and state statutory provisions, they are:

U.S. Constitution
Article IV, Section 2 [Appx. 25]
5th Amendment [Appx. 25]
14th Amendment, Section 1 [Appx. 25]

D.C. Code
Section 11-2501(a) [Appx. 25]
Section 11-2503(b) [Appx. 25-26]

D.C. Bar Rule XI
Section 3(c) [Appx. 26]
Section 11(d) [Appx. 28]
Section 11(e) [Appx. 28]

STATEMENT OF CASE

I. Introduction

These certiorari proceedings arise out of D.C. bar reciprocal disciplinary proceedings which resulted in the temporary and final suspension of licence to practice law held by petitioner, a D.C. resident, in a non-emergency situation without the requisite notice or hearing and upon terms and conditions different from D.C. bar members temporarily suspended in emergency situations by the respondent, the D.C. Court of Appeals, based upon a Florida Supreme Court order granting petitioner's petition for leave to resign the Florida Bar while disciplinary proceedings were pending for the alleged misconduct of charging an unreasonable fee. Respondent, while expressing no opinion on the petitioner's equal protection challenges to the temporary suspension, justified petitioner's suspension in violation of his due process rights (insufficient or defective notice and no hearing at either the interim or final suspension stages) because interim suspension is constitutionally permissable without any pre-suspension hearing under this Court's ruling in Barry v. Barchi, 433 U.S. 55, 99 S.Ct. 2642 (1979), and, although Congress statutorily mandated in D.C. Code Sec. 11-2503(b) that suspension of a D.C. bar member is prohibited unless the member is personally served (or in default thereof constructively served) with written charges under oath and accorded a hearing, these requirements were satisfied: First, that personal service of charges under oath was satisfied by service of a show cause order by mail upon the unsworn recommendation of its bar enforcement officer (D.C. Bar Counsel); Second, that as to a hearing right this was satisfied because petitioner waived his rights to a hearing in the foreign disciplinary proceedings by petitioning to resign while under disciplinary investigation without an admission of misconduct or a finding of misconduct by the foreign disciplining court which could be adopted in D.C. reciprocal disciplinary proceedings; furthermore, because the petitioner in

challenging the constitutionality of disciplinary proceedings before its administrative tribunal (D.C. Board on Professional Responsibility) by motion instead of responding directly to the show cause order commencing reciprocal discipline there was an implied abandonment of his right to a hearing under the bar regulations by petitioner's failure to adhere to the preconditions for a hearing. See, Final judgment of discipline, Appx. 5.

Respondent provisionally granted but later denied a rehearing en banc but while under consideration was advised of the recent opinion of this Court in Gilbert v. Homar, No. 96-651, ___ U.S. ___, 117 S.Ct. 1807 (June 6, 1997) affirming a public safety employee's right to some preliminary non-evidentiary hearing before temporary suspension without pay pending a prompt postsuspension evidentiary hearing. Certiorari is sought for the reasons that these reciprocal disciplinary proceedings represented an unacceptable and unusual departure from norms applied to the administration of justice, that the disciplinary judgment conflicts with relevant decisions of this Court as well as every other federal and state court in the nation, and of the respondent's own precedents, and that the disciplinary judgment adversely affects important due process rights of all citizens who hold professional or trade licenses in more than one jurisdiction and are accused of misconduct.

II. Background

In August, 1992 petitioner was allowed to resign the Florida Bar while under disciplinary investigation for misconduct by the Florida Supreme Court based upon an uncontested petition and without an admission or finding of misconduct, and stated in its disciplinary order, inter alia:

> The uncontested petition to resign with conditions in lieu of disciplinary proceedings, with leave to seek readmission after three (3) years, is granted effective immediately. ... The

Florida Bar v. Richardson, No. 80,073, ___ So.2d ___ (1992)

Based upon this resignation, an assistant in Office of D.C. Bar Counsel [the prosecutorial arm of the disciplinary division -- Board on Professional Responsibility ("Board") -- of the D.C. Bar which is an agency for all aspects of attorney regulation by respondent created under its congressional authority found in D.C. Code Sec. 11-2501 et seq., see Appx. 25-26] by letter of inquiry to the petitioner in April, 1994, notified the respondent that an investigation was being commenced into his resignation and directed that he respond. A detailed written response was submitted to the letter of inquiry by the petitioner in May, 1994 providing his defenses and opposing continuation of the investigation and any form of reciprocal discipline.

Over a year later on or about May 26, 1995 D.C. Bar Counsel (Mr. Becker) by correspondence notified the respondent's Clerk that the petitioner had resigned the Florida Bar, attached a certified copy of the Florida Supreme Court's order allowing his resignation and a copy of a proposed show cause order for imposing automatic interim suspension and commencing reciprocal discipline against the petitioner pursuant to D.C. Bar Rule XI, Sec. 11(b) which provides, inter alia:

> It shall be the duty of Bar Counsel ... (u)pon learning that an attorney subject to the disciplinary jurisdiction of [the D.C. Court of Appeals] has been disciplined by another court ... [to] obtain a certified copy of the disciplinary order and file it ... with this Court ... .

A courtesy copy of this transmittal correspondence and its attachment were sent simultaneously to the petitioner.

Interim suspension is automatic under D.C. Bar

Rule XI, Sec. 11(d) which provides, inter alia:

> (d) **Temporary suspension and show cause order.** Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of [the D.C. Court of Appeals] has been suspended or disbarred by a disciplining court outside the District of Columbia ... the Court shall forthwith enter an order suspending the attorney from the practice of law ... pending final disposition of any reciprocal disciplinary proceeding ... (Emphasis supplied) Appx. 28

So on June 1, 1995 the petitioner filed exceptions along with a motion for leave to file them objecting to the entry of the interim suspension arguing the inapplicability of Sec. 11(d) since the petitioner was not "suspended or disbarred" but resigned from the Florida Bar, the unconstitutionality of the proceedings, and an infinity of proof. Bar Counsel's main argument in his June 19, 1995 response was that the petitioner's Florida resignation was the "functional equivalent" of a suspension since the prohibition from seeking readmission for a three year period was "discipline" although there was no finding by the Florida Supreme Court or an admission of misconduct by the petitioner, i.e. the requirements of the Sec. 11(d) were satisfied for immediate suspension without a hearing.

Upon consideration of Bar Counsel's correspondence, petitioner's exceptions and Bar Counsel's opposition, without conducting a hearing, the respondent entered an order temporarily suspending the petitioner and commencing reciprocal disciplinary proceedings on June 27, 1995, eight (8) days after Bar Counsel's response. See, Appx. 1 (Interim suspension and show cause order by respondent). Thereafter the reciprocal disciplinary proceedings proceeded with numerous filings and counter-filings which are abstracted and excerpted

as follows: (1) **August, 1995**—Bar Counsel commenced discovery by subpoena which was unsuccessfully contested by the respondent without any hearings before the Board; (2) **July 27, 1995** and **April 4, 1996**—Bar Counsel filed two statements with the Board outlining his position originally on the first date and it was supplemented on the second date [Sec. 11(d) provides that the accused attorney has 30-days to file written defenses, but the June 27, 1995 interim suspension order required Bar Counsel to file a statement within 30-days and the petitioner had 10-days to respond]; (3) **May 32, 1996**—Petitioner filed a motion to dismiss challenging the constitutionality of the proceedings and requested oral argument; (4) Board denied all motions by petitioner contesting discovery and for dismissal of the proceedings without any hearing; (4) **March 12, 1996**—Bar Counsel sought and obtained without a hearing a "fresh order" of interim suspension under Sec. 11(d) using the reciprocal disciplinary order of the U.S. Court of Appeals disbarring the petitioner based upon his Florida resignation [also without any oral argument or evidentiary hearing before a sua sponte determination by the appeals court that in resigning the Florida Bar while disciplinary investigations were pending constituted an implied admission by the petitioner of the underlying misconduct], see Appx. 3 (new interim suspension order); (5) **July 31, 1996**—Board issued its report and recommendation that petitioner be finally suspended for three (3) years without a hearing based upon Bar Counsel's statements with unsworn documentary evidence consisting primarily of allegations made by Florida Bar Counsel in his response to petitioner's resignation petition, allegations made by the petitioner in a reply filed in the Florida resignation proceedings after the order was entered allowing the resignation and allegations made by the petitioner in his exceptions to entry of the June, 1995 interim suspension order; (6) **August 30, 1996**—Petitioner filed exceptions to the Board's report and recommendations; (7) **November 14, 1996**—Bar Counsel filed his opposition brief; (8) **November 26,**

1996--Petitioner filed a reply and motion for immediate reinstatement which Bar Counsel opposed; (9) February 12, 1997-- oral argument before a panel of the respondent was held; and (10) April 17, 1997--the opinion affirming the Board's report and recommendation regarding final suspension (which continues) was entered. See, Appx. 5 (Final judgment of discipline.)

In the respondent's final judgment of discipline approving the recommendation and report of its Board as to reciprocal discipline for the petitioner's resignation of the Florida Bar it held (1) that the petitioner is not statutorily or constitutionally entitled, nor was he provided a preliminary hearing prior to imposition of the interim discipline since the only prerequisite to interim discipline is the filing by Bar Counsel of a certified copy of the foreign court's disciplinary judgment, see, Slip op. at 1003 ["On June 27, 1995, (respondent) ordered Richardson's temporary suspension from the practice of law, without a hearing, pending final disposition of the proceedings." (emphasis supplied)] 1012, 1013 in Appx. at 6, 15, 16 ; (2) that a D.C. Bar member while entitled to a hearing under D.C. Code Sec. 11-2503(b) generally on reciprocal disciplinary charges [see, Slip. op. at 1006, Appx. 9], this entitlement is satisfied and D.C. disciplinary authorities need not provide a hearing by the availability of a hearing in the foreign jurisdiction whether the member exercised that right or not, and in this case, the petitioner was found to have constructively waived his right to a hearing by petitioning to resign the Florida Bar although there is no express waiver [see, Slip op. at 1006, 1013-1014, Appx. 9, 16-17]; and that a D.C. bar member subject of reciprocal disciplinary procedures here is entitled to a hearing under D.C. Bar R. XI, Sec. 11(c) limited to the issues of whether the foreign disciplinary procedures comported with due process or lacked sufficient evidence, but under the circumstances of this case, the petitioner by challenging the reciprocal disciplinary procedures on grounds that they violated his due process rights

failed to make the requisite prima facie case for a Sec. 11(c) hearing identified to exist by the respondent and therefore constructively waived or elected to abandon that right to a hearing. See, Slip op. at 1016 (2nd full para.), Appx. 19.

B Raising Federal Questions.

Petitioner throughout the reciprocal disciplinary proceedings raised the federal questions repeatedly regarding the violations of his due process and equal protection rights under the Constitution, D.C. Code and Bar Rules by the following pleadings before the respondent: (1) 06/01/95—Exceptions to Recommendation of Bar Counsel for Temporary Suspension; (2) 08/07/95—Motion to Vacate Reciprocal Discipline/Temporary Suspension Order, etc.; (3) 08/21/95—Reply to Bar Counsel's Opposition [re Motion to Vacate, Id.]; (4) 02/05/96—Exceptions to Bar Counsel's Recommendation for Additional Discipline; (4) 02/16/96—Opposition to Motion to Enforce Subpoena and Petition for Writ of Mandamus; (5) 08/30/96—Exceptions to Board's Report and Recommendations; and (6) 04/29/97—Petition for Rehearing or Rehearing En Banc.

And by pleadings before respondent's Board as follows: (1) 11/14/95—Petition to Review Denial of Motion to Quash Subpoena; and (2) 05/31/96—Motion to Dismiss. All exceptions, motions and petitions listed above were denied by the respondent or its Board. See also, In re Richardson, No. 95-BG-639, 692 A.2d 427 (D.C., 1997), Slip op. at 1002-1007 (Appx. 5-10), 1011-1017 (Appx. 14-20) ["We also note that (petitioner) has taken the opportunity to file many motions, both before (respondent) and before the Board, addressing all of his arguments." Id., at 1018 n. 3, Appx. 21 n. 3]

REASONS TO GRANT WRIT

I. Introduction

This case presents an important question of federal law related to the circumstances, if any, under which a state court can be excused from its affirmative duty to give the due process and equal protection of the laws in its reciprocal disciplinary enforcement activities of attorneys who hold multistate bar memberships for implied or alleged misconduct committed in a foreign jurisdiction. Under a bar regulation which permits in a non-emergency situation the mere filing of a foreign disciplinary judgment to automatically suspend an attorney from practice without notice or hearing, which was construed for the first time to apply to resignation proceedings not expressly covered by the regulation, and which provides disparte treatment of temporarily suspended attorneys in emergency and non-emergency situations, the former being commenced by written charges under oath with a prompt post-suspension hearing provided and interim suspension being restricted to taking new cases and the latter forced to cease practicing completely, the respondent temporarily suspended the petitioner's license to practice law.

Furthermore, the respondent imposed final suspension 22 months later upon the petitioner without according him certain due process rights mandated by Congress in its enabling regulatory legislation as conditions precedent to the respondent's exercise of its power to suspend a D.C. Bar member under D.C. Code Sec. 11-2503(b), namely: filing of written charges under oath, setting of a hearing date on those charges, and personal service upon the accused attorney (and in default thereof for good cause shown constructive service) and contrary to well settled and longstanding decisions of this Court dating to the late 1800s and one of the cardinal principles in the administration of justice that no citizen may be condemned or divested of a protected property interest — of which surely the license to practice law is such an

interest — without notice and hearing. Petitioner's treatment at the hands of the respondent resulted in satisfying standards for review applied by this Court in writ of certiorari proceedings, but also satisfies the standards for issuance of a writ of mandamus because the respondent has acted beyond the exclusive (i.e. legislative, executive and judicial) jurisdiction to regulate the practice of law given the respondent by Congress in D.C. Code Sec. 11-2501 et. seq. with the proviso that "a member of the bar may not be ... suspended ..." by the respondent without the notice and hearing requirements of D.C. Code Sec. 11-2503(b).

Therefore, this case is writworthy because: (1) the respondent's disciplinary judgment conflicts with the relevant decisions of this Court, every other federal and state court in the nation, and respondent's own precedents which are in complete agreement that the interim and final suspension of an attorney's licence to practice law must meet the "root", "basic", or "fundamental" requirements of due process of law: meaningful notice and opportunity to be heard; and (2) the respondent's disciplinary judgment was entered in reliance upon procedures which represent an unacceptable and unusual departure from the norms established by this Court interpreting the due process and equal protection guarantees of the Constitution and by Congress in the legislation reposing attorney regulation in the respondent which adversely affects the rights of any citizen who holds professional or trade licenses in more than one jurisdiction.

II. Application of Writ Review Standards

A. Conflict with Decisions of this Court and Every other State and Federal Court in the Nation, Including Respondent's Own Decisions.

1. Insufficiency of Notice and Lack of Hearing.

An attorney's interest in pursing his calling is protected by the Due Process Clause of the 5th and 14th Amendments. See, Leis v. Flynt, 439 U.S. 438, 445 n. 1, 99 S.Ct. 698, 702 n. 1 (1979). It is so well settled as to be axiomatic that to meet the requirements of due process of law it is necessary that an attorney whose license is sought to be suspended must be given notice of the pending suspension and an opportunity to be heard in his own defense whether the alleged misconduct arose in the disciplining jurisdiction originally or elsewhere. The cases supporting this proposition in this Court and under the respondent's precedent are legend beginning in 1867, e.g. Ex parte Garland, 4 Wall 333, 18 L. Ed. 366 (1867), Selling v. Radford, 243 U.S. 46, 37 S.Ct. 377 (1917), United States ex rel. Wedderburn v. Bliss, 12 App. D.C. 485 (1898), Phillips v. Ballinger, 37 App. D.C. 46 (1911), Laughlin v. Wheat, 68 App.D.C. 190, 95 F.2d 101 (1937); In re Cummings, 466 A.2d 1124 (D.C., 1983) And other cases collected at Anno, "Suspension or revocation of medical or legal professional license as violating due process -- federal cases", 98 L.Ed. 852, 856-857. For a comprehensive summary of this Court's rulings on the right to a pretermination hearing since 1925 see the dissenting opinion in Davis v. Scherer, 468 U.S. 183, 104 S.Ct. 3012 (1984).

A few selected quotes in several notable opinions of this Court since 1950 should suffice to demonstrate the universal acceptance by this Court of the fundamental elements of due process: notice and hearing. In Bell v. Burton, 402 U.S. 535, 542, 91 S.Ct. 1586, 1591, (1972) this Court held that:

> Before a person is deprived of a protected interest, he must be afforded opportunity of some kind of hearing, except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. ... While many controversies have raged about ... the Due Process Clause, ... it is fundamental that except in emergency situations (and this is not one) due process requires that when a State seeks to terminate [a protected] interest ... it must afford notice and opportunity for hearing appropriate to the nature of the case before the termination becomes effective. (Internal quotation marks and citations omitted. Emphasis in original.)

Based upon an exhaustive review of this Court's cases, Justice White in Arnett v. Kennedy, 416 U.S. 134, 185, 94 S.Ct. 1633 (1974) explained that

> where there is a legitimate entitlement to a job, as when a person is given employment subject to his meeting certain specific conditions, due process requires, in order to insure against arbitrariness by the State in the administration of its laws, that a person be given notice and a hearing before he is finally discharged.

Justice Powell summarized in Wolff v. McDonnell, 418 U.S. 539, 557-558, 94 S.Ct. 2963, 2975 (1974) for the Court the fundamental principles whose sources could be traced back to cases from the 19th century, he wrote:

> Procedural due process imposes constraints on governmental decisions which deprive an individual of "liberty" or "property" interests within the meaning of the Due Process Clause of the

> Fifth or Fourteenth Amendment ... This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.

Concurring in Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 179, 71 S.Ct. 624, 652 (1951), Justice Douglas stated that "(s)teadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law." (Emphasis supplied)

While steadfastly adhering to the principle that the Due Process Clause requires that an individual be given an opportunity to be heard before being deprived of any significant property interest this Court has never approved interim suspensions without some type preliminary hearing however informal or speedy in non-emergency situations pending a prompt final evidentiary hearing. See, Fuentes v. Shevin, 407 U.S. 67, 92 S.Ct. 1983 (1972) [An employee with a property interest in his employment is entitled by due process to a pre-termination hearing absent extraordinary or exigent circumstances.] Davis [Pretermination hearing required.]; Barry v. Barchi, 433 U.S. 55, 99 S.Ct. 2642 (1979) [A State is entitled to impose an interim suspension pending a prompt judicial or administrative hearing that would definitely determine the issues whenever it has satisfactorily established probable cause.]; And a case just decided last term, Gilbert v. Homar, ___ U.S. ___, 117 S.Ct. 1807 (1977) [Public safety employee provided informal preliminary hearing prior to interim suspension without pay but case remanded to determine if a prompt final evidentiary post-suspension hearing was provided.]

In Fuentes this Court in an opinion by Justice Stewart stated as to the right to a presuspension hearing:

> This is no new principle of constitutional law. The right to a

> prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the form of a hearing appropriate to the nature of the case ... and depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any], ... the court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes place. ... [Internal quotation marks and numerous citations omitted. Second emphasis supplied, first emphasis in original.] Id., 407 U.S. at 82, 92 S.Ct. at 1995

Bar disciplinary proceedings are not excepted. See, In re Ruffalo, 390 U.S. 544, 550-551, 88 S.Ct. 1222, 1225-1226 (1968). In this case no "extraordinary" or "exigent" circumstances existed for investigation was commenced into petitioner's Florida Bar's resignation in April, 1994 and interim suspension without hearing was imposed in June, 1995 based upon the submission by the respondent's Bar Counsel of petitioner's resignation order.

Respondent's deviation from the norm in this case borders on the unconscionable and demonstrates the lengths to which an institution of government would go to when its institutional integrity (patently unconstitutional bar procedures) are challenged. Deeply embedded in our constitutional and political history as a free people is the high value placed on a person's right to enjoy his property free from governmental interference. The prohibitions against the deprivation of property without due process protects that hollowed interest. Petitioner by virtue of being an attorney is not relegated to a watered-down version of constitutionally guaranteed due process rights. Only issuance of a writ by this Court can correct respondent's departure.

2. Bar Regulation is Vague and has Invalid Presumptions

If a statute providing for the suspension of a law license is to meet the test of substantive due process, it must be certain in its terms. Its terms must have an ascertainable meaning not only to attorneys but to laypersons. Enforcement officers should not have any discretion to define offenses, no proof should be necessary to establish the standard other than the offensive act itself. Without certainty, a statute or regulation does not provide the requisite fair notice required by the Due Process Clause. See, Zauderer v. Office of Disciplinary Enforcement Counsel, Supreme Court of Ohio, 471 U.S. 626, 665-666, 105 S.Ct. 2265, 2289-2290 (1985)

In Zauderer this Court held that:

> A regulation that either forbids or requires the doing of an act in terms so vague that men of common intelligence differ as to its application, violates the first essential of due process of law. ... The Fourteenth [or Fifth] Amendment's Due Process Clause insist(s) that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. ... *** These guarantees apply fully to attorney disciplinary proceedings. ... (Internal quotation marks and citations omitted; Insert supplied).

Zauderer relying upon a prior opinion of this Court in In re Ruffalo, it was further stated:

> But where (t)he appraisal of [an attorney's] conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question, and where the State has not otherwise

> proscribed the conduct in reasonably clear terms, the Due Process Clause forbids punishment of the attorney for that conduct. Zauderer, supra.

A charge of misconduct and imposition of sanctions must be based upon regulatory language that is clear and precise without need for interpretation or construction. Interim suspension of petitioner based upon his resignation not being provided by statute or rule was constitutionally impermissable.

Due process further requires that statutory presumptions in criminal or quasi-criminal/property forfeiture (e.g. bar regulations) statutes or provisions show a direct correlation between the evidence presented and the misconduct assumed. See e.g., Tot v. United States, 319 U.S. 463, 467, 63 S.Ct. 1241 (1943) holding that:

> the due process clauses of the Fifth ... Amendmen[t] set limits upon the power of Congress or that of a State legislature to make proof of one fact or group of facts evidence of the existence of the ultimate fact on which guilt is predicated (;)

and Leary v. United States, 395 U.S. 6, 89 S.Ct. 1532 (1969). In Leary, Justice Harlan's opinion stated the governing principle underlying an unconstitutional statutory presumption:

> [A quasi-]criminal statutory presumption must be regarded as "irrational" or "arbitrary" and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to defend. Id. 395 U.S. at 36, 89 S.Ct. at 2548.

In construing the part of D.C. Code Sec. 11-2503(b) allowing for interim suspension after filing

and service of charges against a bar member without a pre-suspension hearing as requiring a pre-interim suspension notice and hearing even if informal and speedy the U. S. Court of Appeals for the D.C. Circuit sitting as the appellate court for the District of Columbia some 60 years ago characterized this procedure as an unconstitutional use of a legislative presumption, it stated:

> In effect, the Legislature has said that whenever an investigating committee recommends the filing of a complaint, and that complaint is filed, then and thereupon the accused attorney stands suspended. His suspension is not based upon any judgment or finding of the court, and is without trial or notice to the accused. It is a legislative decree, by which the mere filing of accusations against an attorney operates automatically to suspend him from practice without hearing or judgment. This is contrary to one of the cardinal principles of the administration of justice, that no man can be condemned or divested of his rights until he has had the opportunity of being heard. (Internal quotation marks omitted). Laughlin v. Wheat, at 102

This is exactly what occurred in this case, petitioner's Florida resignation order was filed and interim suspension was imposed automatically.

Then nine (9) months later in the reciprocal disciplinary proceedings the respondent summarily superseded the initial interim suspension imposed June, 1995 based directly on the Florida resignation order and replaced it with a "fresh order" of interim suspension based upon a reciprocal disciplinary action by the United States Court of Appeals for D.C. disbarring the petitioner for his resignation action which was construed by

the appeals court sua sponte as an implied "admission" of misconduct. Such is the sorry state of due process in the D.C. and other federal courts of our nation's Capital as relates to reciprocal discipline.] Procedural irregularities abound which should prompt this Court to take remedial action via these certiorari proceedings.

3. Equal Protection Rights Denied.

Equal protection of the laws prohibits the government from creating "arbitrary classifications". See, Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 31 S.Ct. 337 (1911). Lindsley summarized the standard by which an equal protection challenge must be tested before this Court: whether the classification assailed "is without any reasonable basis and therefore is purely arbitrary". One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Id. Thus where bar disciplinary regulations deal with the same or similar misconduct and there is a difference in how and what discipline is imposed, then there must be some rational reason for the disparate treatment.

There is no rational reason which would require the unequal treatment between types of interim suspensions in emergency and non-emergency situations which would be more favorable under D.C. Bar regulations to the emergency situation under D.C. Bar R. XI, Sec. 3(c) [Appx. 26] than the non-emergency situation under D.C. Bar R. XI, Sec. 11(d) [Appx. 28] as to mode of commencement (by affidavit with personal service vs. by investigation with mail service), nature of the injunction (not affecting existing cases vs. complete closure), and the availability of a prompt post-suspension hearing (hearing with bar counsel bearing proof vs. no hearing but based upon written submissions with accused attorney bearing proof). Applying the foregoing case facts and due process and equal protection principles to the review standards for issuance of a writ of certiorari, this case is

appropriate for such relief and the Court is urged to come to that conclusion.

B. Unacceptable Departure from Established Norms Governing the Administration of Justice Nationally.

1. Respondent's Lack of Jurisdiction

Federal courts created by Congress must adhere to their statutorily mandated jurisdiction. See, Kline v. Burke Const. Co., 260 U.S. 226, 43 S.Ct. 79 (1922). Writing on federal judicial power, Justice Sutherland in Kline stated:

> Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the general government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. Id, 260 U.S. at 233-234, 43 S.Ct. at 82

Respondent's authority to suspend attorneys is restricted by Congress in D.C. Code Sec. 11-2503(b) which requires that prior to any disciplinary proceeding for suspension, a sworn complaint must be filed, personally served upon the responding attorney, and a time set for a hearing. Appx. 25 "[T]he statute is mandatory in its terms." Matter of Colson, 412 A.2d 1160, 1164 (D.C., 1979) (En banc decision); In re Laughlin, 474 F.2d 444, 447 n. 3 (U.S. App. D.C., 1972), cert den. 412 U.S. 941, 93 S.Ct. 2784 (1973).

Since these requirements were not adhered to, the respondent was prohibited from suspending the petitioner and having done so was in violation of this statutory prohibition upon the exercise of its jurisdiction. Respondent's interim disciplinary

orders and final judgment entered against the petitioner are therefore void. Waskey v. Hammer, 223 U.S. 85, 95, 32 S.Ct. 187, 189 (1912); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291, 100 S.Ct. 559, 564 (1980) Not only does a writ of certiorari lie to correct the respondent's ultra vires actions, but also a writ of mandamus. See, Laughlin v. Wheat (Writ of mandamus granted in D.C. interim suspension action).

2. Due Process Denied.

Under its congressional authority to regulate attorneys, the respondent promulgated D.C. Bar Rule XI, Sec. 11(d) which permits the automatic interim suspension of an attorney who "has been suspended or disbarred" by another court with whom the respondent shared supervisory authority without notice or hearing. Section 11(d) was promulgated in 1989 by respondent notwithstanding a 1937 ruling in Laughlin v. Wheat that interim suspension under the D.C. disciplinary statute could not be effectuated without "both notice and a hearing before suspension even though the notice and the hearing be informal and speedy. Id. at 105 This ruling was reaffirmed by respondent in the 1983 Cummings case which held that "some kind of notice and a hearing must be afforded before an attorney may be suspended." Id., 466 A.2d at 1225.

Relying on this Court's ruling in Barry the respondent justified its failure to accord the petitioner a presuspension hearing. Richardson, Slip op. at 1003 (Appx. 6) ["On June 27, 1995, (respondent) ordered Richardson's temporary suspension from the practice of law, without a hearing, pending final disposition of the proceedings."] Slip op. at 1006 (Appx. 9) No hearing was accorded the petitioner promptly after the temporary suspension or at any other time for that matter (ignoring this Court's warning recently issued in Gilbert regarding prompt hearings) for final disposition occurred some 22 months later in April, 1997. The fundamental requirement of notice and hearing as prescribed by D.C. Codes Sec. 11-

2503(b) was not satisfied, as well as the constitutional requirements for such procedures. Such a departure in unacceptable and unusual and the writ should issue for this reason alone.

However, the respondent justifies its departure from providing presuspension hearings in reciprocal disciplinary proceedings such as petitioner's upon three novel grounds: First, that respondent could forego providing the petitioner with a hearing because a

> jurisdiction can comply with the Constitution by imposing reciprocal discipline after relying on the evidentiary hearing process provided by another jurisdiction. Richardson, Slip op. at 1012, Appx.12.

In other words, respondent's performance of the affirmative duty it owes to provide the petitioner with a hearing is excused because Florida provided the petitioner with an opportunity to be heard whether he exercised it or not.

Second, that in petitioning to resign the Florida Bar the petitioner waived his right to an evidentiary hearing on the misconduct charges there and that waiver carries over to the reciprocal disciplinary proceedings before the respondent. In the words of the respondent:

> Richardson's loss of an evidentiary hearing in Florida was his own choice: by electing to resign, he waived his right to a hearing where he could have contested the charges. ... [A]s a consequence of Richardson's Florida waiver, [the respondent is] entitled to rely -- for purposes of final, reciprocal discipline — on the disciplinary result in Florida, properly certified to [respondent], without affording Richardson the evidentiary hearing on the Florida charges he

> elected to forego earlier. Id., Slip op. at 1013 (Emphasis supplied)

And, third, petitioner

> was entitled to a hearing ... [to demonstrate certain defenses outlined in D.C. Bar Rule XI, Sec. 11(c), petitioner] ... however declined the opportunity to make such showings and, therefore, should not be heard to ask for that opportunity here. Id, Slip op. at 1016, Appx. 19

In other words, petitioner's right to a hearing is conditioned upon his raising certain written defenses before the Board and since those defenses were not raised the respondent need not provide him with a hearing.

None of these justifications constitute exceptions from the general rule that a pre-deprivation hearing or a prompt post-deprivation hearing must be provided when a person's license to practice law is suspended. See, e.g. United States v. Good Real Property, 510 U.S. 43, 114 S.Ct 492, 501 (1993).

> The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions. Fuentes, 407 U.S. at 80, 92 S.Ct. at 1983

A State's affirmative duty to provide constitutional guaratees of equal protection and due process:

> ... can be performed only ... within its own jurisdiction. ... That obligation is imposed by the Constitution upon the States severally as governmental entities, -- each responsible for its own laws establishing the rights and duties of persons within its borders. It

> is an obligation the burden of which cannot be cast by one State upon another and no State can be excused from performance by what another State may do or fail to do. ... [The Court] find[s] it impossible to conclude that what otherwise would be unconstitutional ... with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere. That resort ... cannot serve to validate it. Missouri v. Canada, 305 U.S. 337, 350, 59 S.Ct. 232, 236-237 (1938)

While the doctrine of collateral estoppel or application of the Full Faith and Credit Clause (Article IV, Section 1) would permit the use of the Florida resignation records (order and any evidence) in D.C. reciprocal disciplinary proceedings without reproof, the doctrine nor does the Clause eliminate the necessity of a hearing in D.C. wherein the evidence from the Florida proceedings can be entered and tested. See, e.g. Ali Baba Co., Inc. v. Wilco, Inc., 482 A.2d 418, 421 (D.C., 1984) [Discussing the offensive use of collateral estoppel]

In Boddie v. Connecticut, 401 U.S. 371, 378-379, 91 S.Ct. 780, 786 (1971) this Court held that waiver is no defense to the failure to provide a pre-suspension hearing:

> That the hearing required by due process is subject to waiver ... does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest ... (Emphasis in the original)

Waiver presusposes the existence of a right in the first instance. Under D.C. bar reciprocal proceedings attorneys have never been allowed a hearing prior to or upon entry of interim or final reciprocal discipline suspension, at least since the

regulations were amended by the respondent in 1989. See, Order re Amendments to D.C. Bar Rule XI on Disciplinary Proceedings, No. M-167-88, ___ A.2d ____ (D.C., 09/01/89). Furthermore, waiver is an intentional act which is itself a question of fact requiring an evidentiary hearing that was not provided the petitioner. Metro Invest. Corp. v. Gross, 161 A.2d 832, 834 (D.C., 1963)

Additionally, there is a presumption against waiver of constitutional rights. Brookhart v. Janis, 384 U.S. 1, 4, 86 S.Ct. 1245, 1247 (1966). To waive a constitutional right, it must be shown that it was "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023 (1938) Since waiver in this instance would be in derogation of a statutory right, it is not favored and will not be inferred from doubtful acts. "For the waiver of constitutional rights in any context must, at the very least be clear." (Emphasis in original) Fuentes, 407 U.S. at 95, 92 S.Ct. at 2002. Florida resignation procedures make no such requirement of waiver and the petitioner expressed no such waiver in the proceedings as to either his Florida or D.C. due process rights.

No where in the D.C. bar regulations governing reciprocal discipline nor in the customary practice is there an entitlement to a hearing by an accused attorney. However, in this case, the respondent 'discovers' such a right limited to the accused attorney raising certain written defenses. See, Appx. 19.

A right to a hearing cannot be conditioned upon the petitioner raising certain defenses and failure to raise those defenses constituting grounds for denying the petitioner a hearing. D.C. Code Sec. 11-2503(b) imposes no such condition for a hearing and neither does the Constitution. Justice White writing for the Court in Cleveland Bd. of Education v. Louderhill, 470 U.S. 532, 105 S.Ct. 1487 (1985) put to rest the notion that there can be "pre-conditions" upon the "minimum [procedural]

requirements" of due process, penned these words:

> the Due Process Clause provides that certain substantive rights -- life, liberty, property -- cannot be deprived except pursuant to constitutionally adequate procedures. ... "Property" cannot be defined by the procedures provided for its deprivation any more that life or liberty. The right to due process is conferred not by legislative grace, but by constitutional guarantee. (Emphasis supplied) Id., 470 U.S. at 541, 105 S.Ct. at 1493.

Respondent had an affirmative duty to afford the petitioner an opportunity to be heard, it did not, and that departure from acceptable and established norms in the administration of justice being not only in violation of respondent's jurisdictional statute , but also in complete disagreement with the due process jurisprudence of this Court, and for that matter of all our nations courts, both state and federal, which hold that the fundamental or "root requirements" of due process are notice and opportunity to be heard before deprivation. Alone stands the respondent's position against every other court in the nation, surely this supports the petitioner's request for this Court to issue the writ of certiorari (or a writ of mandamus) for such a departure.

Other departures are evident in these case facts also. They include violations of petitioner's substantive due process rights by commencing reciprocal discipline under a bar disciplinary rule that does not provide for interim suspension upon resignation of a foreign bar while under disciplinary investigations. D.C. Bar R. XI, Sec. 11(d), Appx. 28. Only after challenging the commencement of reciprocal disciplinary proceedings and his interim suspension did the petitioner realize from Bar Counsel's filings with the respondent that his Florida Bar resignation without a finding or admission of misconduct constituted the

"functional equivalent" of a suspension triggering his automatic interim suspension under D.C. Bar Rule XI, Sec. 11(d). This interpretation by the respondent's enforcement officer of the meaning of the disciplinary rule is unacceptable under the substantive due process jurisprudence of the Court on the issue of vagueness which should again prompt this Court to issue the writ requested by the petitioner. See, Ruffalo.

3. Equal Protection Rights Denied.

Under D.C. Bar Rule XI, Sec. 3(c) governing emergency interim suspension under circumstances wherein the attorney is causing "great harm", interim suspension is obtained after filing a sworn statement. Thereafter upon interim suspension, the accused attorney can continue handling existing cases, but is enjoined from accepting new cases pending a prompt hearing. This should be the only circumstance under the D.C. Bar rules in which interim suspension should occur without a prior hearing for

> temporary suspension prior to a hearing is only warranted if "exigent circumstances" exist. Burleigh v. State Bar of Nevada, 643 P.2d 1201, 1204 (Nev., 1982) [Declaring constitutional interim suspension procedures identical to D.C.'s in emergency situations without a hearing.]

However, under reciprocal disciplinary interim suspensions pursuant to D.C. Bar Rule XI, Sec. 11(d) governing non-emergency situations, the petitioner had proceedings commenced without the filing of sworn charges nor was his interim suspension limited to accepting future cases pending a hearing but he was forced to cease practicing immediately.

Such disparate treatment is not justified for while the petitioner's actions did not constitute "great harm" and was based on alleged misconduct elsewhere, the petitioner suffers a greater penalty

and diminished due process rights. There is no rational justification for this different treatment. This constitutional challenge was not even addressed by the respondent in its disciplinary judgment.

Petitioner's due process and equal protection rights were denied without justification by the respondent. The reciprocal disciplinary proceedings were highly irregular and is an unacceptable departure from the norm in disciplinary proceedings. Issuance, therefore, of the writ of certiorari is appropriate and is requested.

III. CONCLUSION/RELIEF SOUGHT

A license to practice law is a property interest secured from arbitrary deprivation by the due process and equal protection guarantees of the Constitution. Congressional statutes conferring jurisdiction must be followed by federal courts. Conditions upon the exercise of federal court jurisdiction imposed by Congress are mandatory and must be adhered to. Respondent, a court created by Congress with exclusive regulatory authority over the practice of law in the District of Columbia, imposed interim and final suspension of the petitioner's law license without following the statutorily mandated due process requirements nor constitutionally based "root requirements" of due process, i.e. notice and opportunity to be heard. Disparate treatment of interimly suspended attorneys in emergency and non-emergency situations, the former having more rights that the later, is impermissable.

Imposing interim suspension for resignation while under disciplinary investigation based upon a bar regulation that provides only for interim suspensions if suspended elsewhere was improper. Grant of due process rights cannot be dependent upon actions by the property owner in another jurisdiction and is an affirmative duty constitutionally imposed upon the states which cannot be abdicated or delegated to another jurisdiction. While due process rights can be waived, the waiver must be an intentional relinguishment of a known due process right and cannot be inferred from conduct related to the due process rights of the property owner in dealing with other property outside the forum jurisdiction.

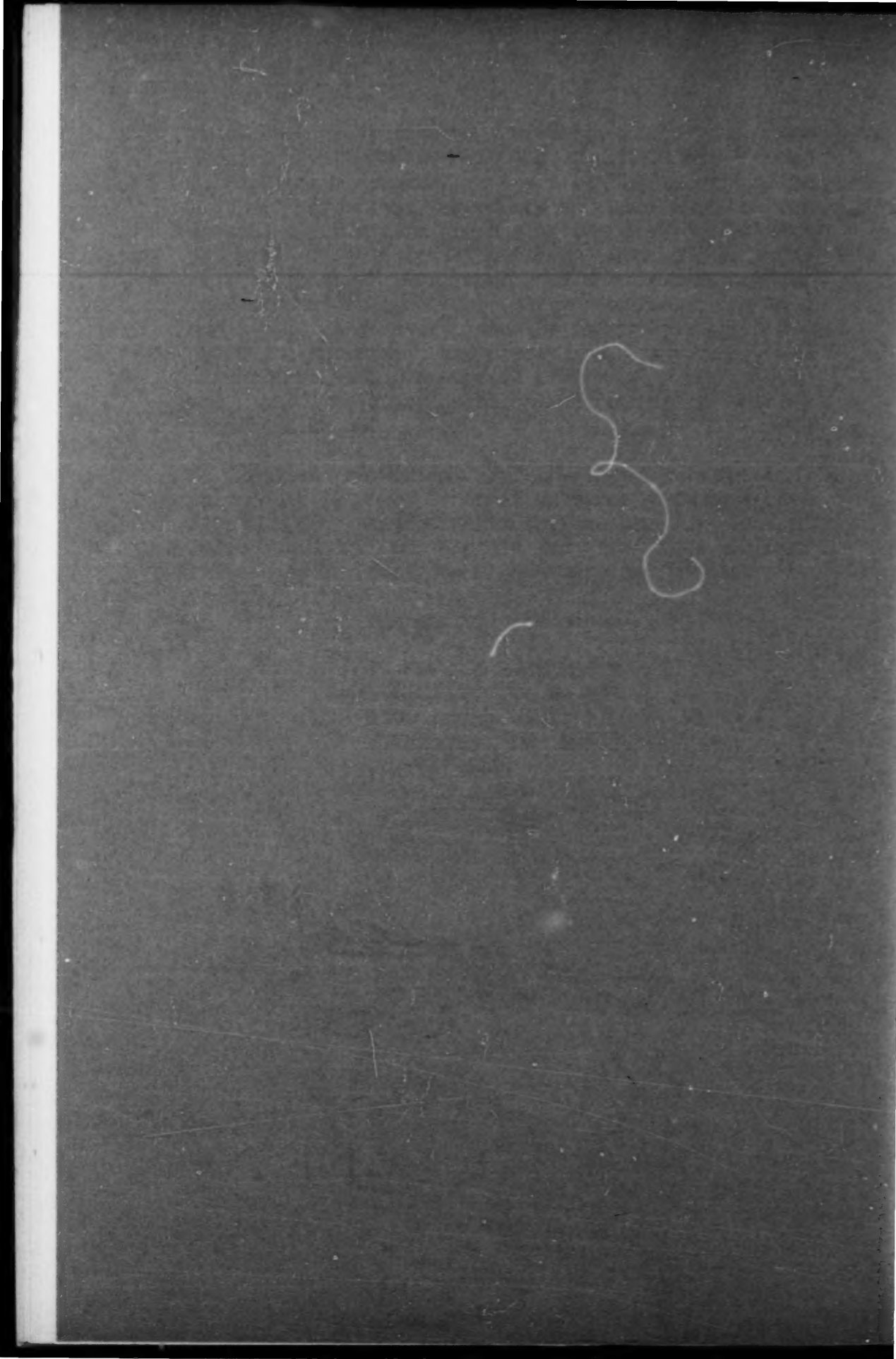
Justifications based upon a concept of reciprocal due process related to different property interests, the use of the doctrine of collateral estopel to avoid providing a hearing in reciprocal disciplinary matters, and constructive waiver without an evidentiary hearing on the issue of waiver do not constitute exceptions to the general

rule that an individual's property rights cannot be deprived without notice and a hearing. The disciplinary judgment subject of this petition for writ of certiorari represents an unacceptable and unusual departure in judicial proceedings related to property forfeitures, conflicts with settled and well established requirements of due process set-out in decisions of this Court, the respondent's own decisions, and every state or federal court in the nation. Moreover, the disciplinary judgment would affect important due process rights of other people who hold multijurisditional licensees, whether attorneys or not.

Relief Requested. For the foregoing reasons, this Court is asked to enter an order granting this Petition for Writ of Certiorari to the District of Columbia Court of Appeals and for such further relief as the Court deems necessary and proper.

Respectfully Submitted:

T. CARLTON RICHARDSON
Petitioner Pro Se
1505 Pennsylvania Avenue, SE
Washington, DC 20003-3117
202/347-4466



No.

United States Supreme Court

October Term, 1997

In re:

T. CARLTON RICHARDSON,
Petitioner.

On Petition for Writ of Certiorari
to the
District of Columbia Court of Appeals

APPENDIX TO WRIT OF CERTIORARI

T. CARLTON RICHARDSON
Petitioner, *Pro Se*
1505 Pennsylvania Avenue, SE
Washington, DC 20003-3117
(202) 347-4466

APPENDIX TO WRIT OF CERTIORARI

Table of Contents

Page

I. Relevant State Court Decisions..... 1

A. Interim Suspension Order (06/27/95)..... 1

In re T. Carlton Richardson, No. 95-BG-639 (D.C., 06/27/97)

B. Interim Suspension Order (03/12/96)..... 3

Id. (D.C., 06/12/96)

C. Final Judgment of Discipline (04/17/97)... 5

Id., 692 A.2d 427 (D.C., 04/17/97)

D. Order Denying Rehearing Petition (11/-10/97)..... 24

Id. (D.C., 11/10/97)

II. Statutory Provisions Involved (Constitution, Statutes, Regulations/Rules)..... 25

A. Federal Constitution..... 25

Article IV, Sec. 2 25
5th Amendment 25
14th Amendment, Sec. 1 25

B. State Statutes..... 25

D.C. Code Sec. 11-2501(a)..... 25
D.C. Code Sec. 11-2503(b) 25

C. State Bar Regulations..... 26

D.C. Bar R. XI, Sec. 3(c) 26
D.C. Bar R. XI, Sec. 11(d) 28
D.C. Bar R. XI, Sec. 11(e) 28

I. RELEVANT STATE COURT DECISIONS

A. Interim Suspension Order (06/27/95)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-639 Jun 27, 1995

In the Matter of
T. CARLTON RICHARDSON, ESQUIRE
A Member of the Bar of the
District of Columbia Court of
Appeals BDN: 180-94

BEFORE: Ferren and King, Associate Judges; and Mack, Senior Judge

O R D E R

On consideration of Bar Counsel's submission to the Court of a certified copy of an order of the Florida Supreme Court accepting the resignation of respondent in lieu of disciplinary proceedings, Bar Counsel's recommendation that the Court issue a temporary suspension order pursuant to Rule XI, Sec. 11(d) of the Rules Governing the Bar of the District of Columbia, the lodged proposed order of suspension, respondent's motion for leave to file exceptions to the recommendation of Bar Counsel for temporary suspension, respondent's lodged exceptions, Bar Counsel's motion to enlarge time to file response, Bar Counsel's lodged response, it is

ORDERED that respondent's motion for leave to file exceptions to the recommendation of Bar Counsel for temporary suspension is granted and the Clerk shall file the lodged exceptions. It is

FURTHER ORDERED that Bar Counsel's motion is granted and the Clerk shall file the lodged response. It is

FURTHER ORDERED that Bar Counsel's

recommendation that respondent be suspended from the practice of law in the District of Columbia pending final disposition of this proceeding is granted. It is

FURTHER ORDERED that Bar Counsel inform the Board on Professional Responsibility of his position regarding reciprocal discipline within 30 days of the date of this order. Thereafter, respondent shall show cause before the Board on Professional Responsibility, if cause there be, within 10 days why identical, greater or lesser discipline should not be imposed in the District of Columbia. It is

FURTHER ORDERED that the Board of Professional Responsibility is directed to recommend promptly thereafter to this Court whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board, instead, elects to proceed de novo pursuant to Rule XI, Sec. 11. It is

***

FURTHER ORDERED that Bar Counsel advise the court if the matter is concluded without the necessity of further Court action.

PER CURIAM

B. Interim Suspension Order (03/12/96)

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-639

FILED
MAR 12 1996

In the Matter of
T. CARLTON RICHARDSON, ESQUIRE
A Member of the Bar of the
District of Columbia Court of
Appeals

BDN: 180-94 & 24-96

BEFORE: Ferren and King, Associate Judges; and Mack, Senior Judge

O R D E R

On consideration of the request from Bar Counsel that the Court enter a fresh order of interim suspension based on a certified copy of an order of the United States Court of Appeals for the District of Columbia Circuit disbarring respondent, respondent's motion for leave to file exceptions to Bar Counsel's recommendation for additional discipline, the lodged exceptions, respondent's motion for oral argument and Bar Counsel's opposition, it is

ORDERED that respondent's motion for leave to file exceptions is granted and the Clerk is directed to file the lodged exceptions. It is

FURTHER ORDERED that respondent's motion for oral argument is held in abeyance pending assignment to a merits division. It is

FURTHER ORDERED that respondent is suspended from the practice of law in the District of Columbia pending final disposition of this proceeding, and it is

FURTHER ORDERED that Bar Counsel inform the Board on Professional Responsibility of his position regarding reciprocal discipline within 30 days of the date of this order. Thereafter, respondent

shall show cause, if cause there be, within 10 days why identical, greater or lesser discipline should not be imposed in the District of Columbia. It is

FURTHER ORDERED that the Board on Professional Responsibilities is directed to consider this matter, in conjunction with BDN: 180-94, and to recommend promptly thereafter to this Court whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board, instead, elects to proceed de novo pursuant to Rule XI, Sec. 11. It is

***

FURTHER ORDERED that Bar Counsel shall advise the Court if the matter is concluded without the necessity for further Court action.

PER CURIUM

District of Columbia Court of Appeals

No. 95-BG-639

IN RE T. CARLTON RICHARDSON, RESPONDENT.

A Member of the Bar of the
District of Columbia Court of Appeals

On Report and Recommendation of the
Board on Professional Responsibility

(Argued February 12, 1997 Decided April 17, 1997)

T. Carlton Richardson, pro se.

Donna M. DeSilva, Assistant Bar Counsel, with whom *Leonard H. Becker*, Bar Counsel, was on the brief, for the Office of Bar Counsel.

Before FERREN and REID, *Associate Judges*, and GALLAGHER, *Senior Judge*.

FERREN, *Associate Judge*: Respondent T. Carlton Richardson, a member of the District of Columbia Bar, takes exception to the Report and Recommendation of the Board on Professional Responsibility. The Board asks us to suspend Richardson from practice in the District of Columbia for three years as reciprocal discipline for conduct that caused Richardson to resign voluntarily from the Florida Bar in 1992. Richardson argues that his Florida resignation was not "discipline" and, therefore, that the imposition of reciprocal discipline, including his interim suspension without an evidentiary hearing, is inconsistent with D.C. Code § 11-2503 (b) (1995 Repl.) and violates his constitutional rights to due process and equal protection of the laws. We conclude that Richardson's Florida resignation while a disciplinary proceeding was pending

against him amounted to "discipline," and that this court's imposition of reciprocal discipline under the circumstances will not violate either his statutory or his constitutional rights. We adopt the Board's recommendation and accordingly order Richardson suspended from the practice of law in the District of Columbia for three years, with reinstatement conditioned upon proof of fitness.

I.

In its report and recommendation, the Board presented the following facts. Between 1987 and 1992, Richardson served as trustee and attorney for the Jacqueline Overton Trust. The Florida Bar received a complaint that Richardson had taken excessive fees from the trust. While this complaint was pending, Richardson voluntarily filed a petition to resign from the Florida Bar. The Supreme Court of Florida granted Richardson's petition, with leave to seek reinstatement after three years. *See Florida Bar v. Richardson*, Case No. 80,073 (Fla. Aug. 27, 1992). Pursuant to D.C. Bar R. XI § 11 (b), (d), Bar Counsel notified this court with a certified copy of a Supreme Court of Florida Order accepting Richardson's resignation from the bar, and recommended imposition of reciprocal discipline. Richardson excepted, arguing that his resignation was not "discipline" and that this court accordingly could not suspend him, even on an interim basis, without an evidentiary hearing. On June 27, 1995, we ordered Richardson's temporary suspension from the practice of law, without a hearing, pending final disposition of the proceeding; ordered Bar Counsel to inform the Board "of his position regarding reciprocal discipline"; and ordered Richardson to "show cause before the Board . . . why identical, greater or lesser discipline should not be imposed in the District of Columbia." Richardson filed several motions pressing constitutional arguments, as well as a defense under D.C. Code § 11-2503 (b). The Board ultimately concluded, however, that Richardson's resignation in Florida under threat of the disciplinary proceeding amounted to "discipline"; that Richardson

had waived his due process right to an evidentiary hearing on the charges against him by voluntarily resigning from the Florida Bar; and that reciprocal discipline — a three year suspension plus proof of fitness for reinstatement — should be imposed.[1] Richardson filed timely exceptions to the Board's report and recommendation.

II.

Richardson's principal arguments can be summarized as follows:

1. D.C. Code § 11-2503 (b) does not authorize the use of reciprocal discipline based on a disposition (including a hearing) in another jurisdiction, and thus Rule XI § 11 is invalid.

2. In any event, because Richardson's resignation did not result in a finding of misconduct, it was not "discipline" that could serve as a basis for reciprocal discipline under D.C. Bar R. XI § 11.

3. The reciprocal disciplinary proceeding under Rule XI § 11 violates Richardson's rights to due process and equal protection of the laws in three ways: (a) it authorizes an interim suspension without a hearing; (b) it permits imposition of reciprocal discipline upon resignation from the bar of Florida, without a hearing in the District of Columbia on whether Richardson, knowingly and voluntarily, not only waived his right to a Florida hearing on the charged misconduct but also, in the absence of a Florida hearing, waived his right to a District of Columbia hearing on that conduct; and (c) it shifted to Richardson the burden of persuading the

---

[1] The Board noted that Richardson had filed a motion to dismiss, challenging the constitutionality of reciprocal discipline under D.C. Bar R. XI § 11, and that Bar Counsel had supplied "a well-articulated defense of constitutionality of the rule and its consistency with D.C. Code § 11-2503 (b)." The Board denied the motion to dismiss, summarily concluding that it "regards this issue as well-settled and concurs with Bar Counsel's sound analysis."

Board and the court that reciprocal discipline should not be imposed.

III.

Richardson contends that D.C. Code § 11-2503 (b) denies this court authority to impose reciprocal discipline; he says it requires the very same process for all attorneys charged with misconduct, regardless of where the alleged misconduct occurred — unless the attorney is subject to discipline under § 11-2503 (a) for conviction of "an offense involving moral turpitude." Richardson cites *In re Colson*, 412 A.2d 1160, 1164 (D.C. 1979) (en banc), for the proposition that the mandatory language of § 11-2503 precludes adoption of the reciprocal discipline rule, D.C. Bar R. XI § 11.

D.C. Code § 11-2503 (b) provides:

> Except as provided in subsection (a), a member of the bar may not be censured, suspended, or expelled under this chapter until [1] written charges, under oath, against that member have been presented to the court, stating distinctly the grounds of complaint. [2] The court may order charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. [3] Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon that member by mail, publication, or otherwise as the court directs. [4] After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof.

Nothing in our rules governing reciprocal discipline is at all inconsistent with the procedural requirements of this statutory provision. Under D.C. Bar. R. XI § 11 (b), Bar Counsel notifies the Board and this court with a certified copy of a

disciplinary order from another jurisdiction against a member of our bar. This meets the first statutory requirement: that Bar Counsel file "written charges under oath." *See* D.C. Bar R. XI § 8 (c); *In re Morrell*, 684 A.2d 361, 366-67 (D.C. 1996) (holding that statutory language is met when Bar Counsel has reason to believe truth of charges and they are specific enough to notify attorney of challenged conduct).

The statute's second requirement calls for a "hearing" which, as a constitutional matter, means an opportunity to be heard before deprivation of a significant property interest. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). Absent further statutory explanation, therefore, § 11-2503 (b) mandates a hearing established by the rules of this court, consistent with constitutional requirements. *See* D.C. Code § 11-2501 (a) (providing that "District of Columbia Court of Appeals shall make such rules as it deems proper respecting . . . censure, suspension, and expulsion" of bar members). D.C. Bar R. XI § 11 assures that an evidentiary hearing on the alleged misconduct will take place (absent waiver) in the jurisdiction where that conduct occurred, and that the respondent attorney will have an opportunity to be heard at a District of Columbia proceeding on whether the evidentiary hearing comported with due process. *See id.* § 11 (c). The reciprocal discipline rule therefore meets the hearing requirement of D.C. Code § 11-2503 (b).

The statute next requires service of the charges upon the attorney, as the reciprocal disciplinary rule itself, Rule XI § 11 (d), requires.

Finally, the statute expressly permits this court to "suspend the person charged from practice at [the] bar pending the hearing," D.C. Code § 11-2503 (b) — clear authority for a temporary suspension under D.C. Bar R. XI § 11 (d) pending final disposition of the reciprocal disciplinary proceeding. Such authority does not violate the Due Process Clause. *See Barry v. Barchi*, 443 U.S. 55, 64-65 (1979) (holding that state was "entitled to impose an interim suspension pending a

prompt judicial or administrative hearing" where important state interest was at risk).

Nothing in the statute prohibits our establishing by court rule, *see* D.C. Code Bar R. XI § 11, a separate reciprocal disciplinary proceeding for attorneys found guilty of misconduct in another jurisdiction, provided, of course, that the reciprocal procedure satisfies the Constitution. Nor does the statute require all attorneys, other than those covered in § 11-2503 (a), to go through the same disciplinary process in this jurisdiction, without regard to where the alleged misconduct occurred. Nothing in our reciprocal disciplinary procedures, therefore, violates § 11-2503 (b).

IV.

We turn to Richardson's argument that his resignation from the Florida Bar was not "discipline" and that this court, therefore, could not properly initiate a reciprocal disciplinary proceeding against him under D.C. Bar R. XI § 11. Richardson stresses that he resigned voluntarily and that neither the Florida Bar nor the Florida Supreme Court found him guilty of any misconduct. Richardson further argues that, in characterizing his resignation as "discipline," the Board erroneously relied on the language of Florida rules that became effective in 1993, whereas Richardson had resigned in 1992.

It is true that, when disciplinary proceedings have been initiated, Florida does not require the respondent attorney to admit the charges as a condition of the attorney's resignation from the bar. *See Florida Bar v. Segal*, 663 So. 2d 618, 620 (Fla. 1995).[2] We agree with the Board, however, that the Supreme Court of Florida's acceptance of Richardson's resignation while a disciplinary proceeding was pending against him constituted "discipline" both in Florida and under our

---

[2] *Cf.* D.C. Bar R. XI § 12 (a)(3), (4) (attorney may consent to disbarment with disciplinary proceedings pending on submission of affidavit affirming that material facts of pending charges are true and attorney has no real defense).

Rule XI § 11. Although the Board erroneously relied on Florida rules that took effect after Richardson's resignation, the changes in the relevant rules from those that governed in 1992 were cosmetic and do not affect our analysis.

A.

Under the Florida Bar Rules in effect when Richardson resigned, the Florida State Bar had the right to contest an attorney's petition to resign from the bar and, in any event, the Florida Supreme Court had to approve the petition. *See* Fla. Bar R. 3-7.11, Resignation from the Florida Bar (1992); *Florida Bar v. Bassett*, 369 So. 2d 583, 585 (Fla. 1979) (per curiam) (denying petition to resign and disbarring attorney); *Florida Bar v. Mattingly*, 329 So. 2d 9, 9 (Fla. 1976) (per curiam) (rejecting petitioner's proposed resignation, as well as Florida Bar's proposed conditions of resignation, and permitting petitioner to resign only on condition that he forego possibility of reinstatement); *see also* Fla. Bar R. 3-7.12, Disciplinary Resignation from the Florida Bar (1993) (requires Florida Supreme Court approval of resignation from Florida Bar).

This required scrutiny of resignations is understandable. When a disciplinary proceeding is pending against an attorney, that attorney's resignation from the bar, without disciplinary consequences, would preserve the right to apply for readmission, as well as to apply for admission in another state, without effective scrutiny of the attorney's professional record — a result entirely at odds with the court's obligation to protect the public and the integrity of the bar. *See Florida Bar v. Davis*, 257 So. 2d 14, 15 (Fla. 1971) (denying petition to resign because "granting of this petition would adversely affect the purity of the courts and would hinder the administration of justice and the confidence of the public in the legal profession"); *In re Harper*, 84 So. 2d 700, 707 (Fla. 1956) (en banc) ("Before accepting such a [disciplinary] resignation, it should be made to appear in a proper and competent manner not only that the public interest will not be adversely affected

by such acceptance but also that the acceptance thereof will not adversely affect the purity of the courts nor hinder the administration of justice."); *see also In re Phillips*, 452 A.2d 345, 347-48 (D.C. 1982) (per curiam) (adopting Board recommendation to reject resignation by attorney who plead guilty to a crime of moral turpitude, under "voluntary resignation" rule no longer in effect). Accordingly, after evaluating Richardson's resignation from the bar, the Florida Supreme Court deferred possible reinstatement for at least three years, just as it would in a formal disciplinary proceeding. *See* Fla. Bar. R. 3-7.9, 3-7.11 (1992) (providing that one who resigns may not apply for readmission for three years or however longer the court may impose in its order); *see also* Fla. Bar. R. 3-5.1, 3-7.10, 3-7.12 (1993) (same). In legal as well as practical effect, therefore, Richardson's resignation was a resignation in lieu of — and thus tantamount to — a three-year "disciplinary" suspension in Florida.

Richardson can claim no surprise at this analysis. The Florida Supreme Court has long regarded a lawyer's voluntary resignation when confronted by a pending disciplinary proceeding as a form of discipline permitted by the court. *See Florida Bar v. Aglow*, 445 So. 2d 1022, 1022 (Fla. 1984) (per curiam) (permitting attorney to resign without right to reapply as reciprocal discipline for disbarment elsewhere); *In re Alfieri*, 428 So. 2d 662, 663 (Fla. 1983) (per curiam) (noting that resignation with right to reapply was equivalent to disbarment, making disbarment unnecessary); *Harper*, 84 So. 2d at 705-07 (concluding that court may permit attorney to resign with disciplinary charges pending, provided court first determines that permitting resignation complies with court's duty to protect public and integrity of courts); *see also Segal*, 663 So. 2d at 620 (concluding that attempted voluntary resignation in Florida a nullity because "[t]he only resignation available to an attorney faced with allegations of a disciplinary violation is a 'disciplinary resignation'"). Nor are we the only court to reach this same conclusion about the significance of resignation from the Florida Bar pending disciplinary

charges. *See Office of Disciplinary Counsel v. Stevens*, 623 N.E.2d 1193, 1194 (Ohio 1993) (per curiam) (suspending respondent indefinitely from practice of law in Ohio as reciprocal discipline since "[r]espondent's resignation from the Florida Bar was disciplinary in nature").

We also note that the Florida Bar has regarded the resignation of one of its members from the bar of another state as cause for reciprocal discipline in Florida. *See Florida Bar v. Eberhart*, 631 So. 2d 1098, 1099 (Fla. 1994) (per curiam) (concluding that resignation from bar of Connecticut pending disciplinary charges warrants, as reciprocal discipline, disbarment in Florida with leave to reapply when reinstated in Connecticut). Richardson was clearly on notice, therefore, that his Florida resignation could — indeed, probably would — have disciplinary consequences elsewhere.

B.

Richardson argues that the Board decided his resignation was "discipline" in Florida only because it erroneously considered a new rule, Fla. Bar R. 3-7.12, "Disciplinary Resignation From the Florida Bar," which did not become effective until 1993, instead of relying on the previous Fla. Bar R. 3-7.11, "Resignation from the Florida Bar," which was in effect in 1992 when he resigned. To the contrary, as *Aglow*, *Alfieri*, and *Harper* — all decided well before the rules change — make clear, the Supreme Court of Florida always has considered a resignation while a disciplinary proceeding is pending to be a form of "discipline"; the fact that the new rule is labeled "Disciplinary Resignation" rather than "Resignation," the label for the old rule, reflects not a change of substance but a more accurate description of what the process has been all along. Our conclusion is buttressed by the fact that in the 1992 rules there was a separate provision for resignations in the absence of pending disciplinary charges. *See* Fla. Bar R. 1-3.4 (1992). (There is no similar provision in the 1993 Florida rules.)

The Board, of course, should have applied the rule in effect at the time of the conduct. *See In re Morrell*, 684 A.2d 361, 362 n.1 (D.C. 1996); *cf. Florida Bar v. Turk*, 307 So. 2d 162, 163 (Fla. 1975) (when considering petition for reinstatement, court will apply eligibility rule in place at time of resignation). But, as we have shown, the error would make no difference to our analysis and thus is harmless.

V.

Richardson contends that Rule XI § 11 violates his constitutional rights to due process and equal protection of the laws in three respects: (1) by authorizing an interim suspension without a hearing; (2) by permitting reciprocal discipline upon resignation from the bar of Florida, without a hearing in the District of Columbia on whether Richardson, knowingly and voluntarily, not only waived the right to an evidentiary hearing on the charges in Florida but also, in the absence of a Florida hearing, waived the right to an evidentiary hearing on those charges in the District of Columbia; and (3) by shifting to Richardson the burden of persuading the Board and the court that reciprocal discipline should not be imposed.

Bar Counsel replies that Richardson received from the Florida disciplinary proceedings all the process he was due there, and that subsequently he has received in this jurisdiction a constitutionally adequate opportunity to show why the Florida proceedings should not serve as support for reciprocal discipline. We agree with Bar Counsel and the Board.

A.

The Supreme Court has held that an attorney has a right to procedural due process in a disciplinary proceeding. *See In re Ruffalo*, 390 U.S. 544, 550 (1968); *see also In re Colson*, 412 A.2d 1160, 1164 (D.C. 1979) (en banc). Furthermore, when a disciplinary proceeding has taken place in one jurisdiction, the court considering discipline of the same attorney in a second jurisdiction, based on the charge brought in the first jurisdiction, need not adopt the findings of the first jurisdiction. *See*

Selling v. Radford, 243 U.S. 46, 48 (1917); *Theard v. United States*, 354 U.S. 278, 281-82 (1957); *In re Reid*, 540 A.2d 754, 758 (D.C. 1988); *Florida Bar v. Wilkes*, 179 So. 2d 193, 195-96 (Fla. 1965); CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 116 (1986). On the other hand, as all these authorities have recognized, a jurisdiction can comply with the Constitution by imposing reciprocal discipline after relying on the evidentiary hearing process provided by another jurisdiction. *See Selling*, 243 U.S. at 49; *In re Velasquez*, 507 A.2d 145, 147 (D.C. 1986) (per curiam). As we stated in *Velasquez*:

> First, another jurisdiction has already afforded the attorney a disciplinary procedure that includes notice, an opportunity to be heard, sufficient proof of misconduct, and a determined sanction. There is no need for a de novo repetition of the entire process . . . . Second, there is merit in the idea of granting due deference — for its sake alone — to the opinions and actions of a sister jurisdiction with respect to attorneys over whom we share supervisory authority.

507 A.2d at 147; *see also In re Sanders*, 580 So. 2d 594, 594 (Fla. 1991) (per curiam) ("We should not allow the practice of law in Florida of one disbarred in his home state."). It is interesting to note, moreover, that the Supreme Court itself uses identical reciprocal disciplinary procedures in disbarment cases. *See* Sup. Ct. Bar R. 8; *In re Isserman*, 345 U.S. 286, 289 (1953), *vacated on other grounds*, 348 U.S. 1 (1954).

B.

Richardson's claimed right to a hearing before imposition of a temporary suspension under Rule XI § 11 (d) is premised on his belief that D.C. Code § 11-2503 (b) permits no suspension without a pre-suspension hearing in the District of Columbia, and that due process is violated by the imposition of such discipline without that prescribed hearing. We have already concluded, however, that the statute, § 11-2503 (b),

does not stand in the way of a reciprocal disciplinary system. Furthermore, we have pointed out that § 11-2503 (b) expressly provides for suspension of an attorney, after written charges have been filed, "pending the hearing" thereof — a clear statement that a merits hearing is not required for a temporary suspension. Under the rules, moreover, there can be no temporary suspension unless Bar Counsel has filed certified copies of the disciplinary order from the foreign jurisdiction with the Board and with this court, providing solid evidence — even before temporary suspension — that the respondent attorney has engaged in professional misconduct.

For all these reasons, therefore, Richardson's argument for a hearing before temporary suspension fails.

C.

Richardson argues that he did not receive due process in the District of Columbia because his resignation in Florida resulted in cancellation of the evidentiary hearing on the merits of the charges against him, a hearing he is entitled to receive before final discipline can be imposed in the District of Columbia — unless waived here. He then contends that, in resigning from the Florida Bar, he did not knowingly and voluntarily waive his right to an evidentiary hearing not only in Florida but also in the District of Columbia. Richardson, in other words, takes the position that if he waived an evidentiary hearing in Florida, that Florida waiver cannot do double duty because he was not on notice that it would do so; he says that even if his resignation waived his right to an evidentiary hearing that otherwise would have been necessary for imposition of discipline in Florida, the failure to hold that hearing removed the predicate — the due process hearing — necessary to justify reciprocal discipline elsewhere.

We agree with Bar Counsel and the Board that Richardson's loss of an evidentiary hearing in Florida was his own choice; by electing to resign, he waived his right to a hearing where he could have contested the charges. We also

agree that, as a consequence of Richardson's Florida waiver, we are entitled to rely — for purposes of final, reciprocal discipline — on the disciplinary result in Florida, properly certified to this court, without affording Richardson the evidentiary hearing on the Florida charges he elected to forego earlier. Put succinctly: if Richardson validly waived an evidentiary hearing in Florida, he is deemed to have waived any evidentiary hearing on the same charges that would otherwise be required by due process before he could be suspended from the practice of law in this jurisdiction. As elaborated below — and contrary to Richardson's contention — his waiver does do double duty.

Richardson does not seriously contend that, if his resignation was "discipline" in Florida, he was entitled, nonetheless, to an evidentiary hearing there; his waiver of a hearing in such circumstances is virtually conceded. Richardson argues, rather, that any alleged waiver of hearing rights was not sufficiently "knowing and voluntary" because he could not anticipate that the District of Columbia would impose reciprocal discipline as a result of his Florida resignation. For this reason, he says, he lacked notice of the consequences of his Florida resignation and thus is entitled to the evidentiary hearing now that he eschewed in Florida. *Cf. In re Drury*, 638 A.2d 60, 63 (D.C. 1994) (per curiam) (holding that attorney was entitled to new opportunity to respond to show-cause order when rules and previous case law, as well as Bar Counsel's recommendation and statements to respondent, suggested Board would impose identical sanction as reciprocal discipline in resignation case, rather than increased sanction based on de novo review of facts underlying resignation).

It is well established that an individual may voluntarily waive process to which he or she has a right. *See D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185 (1972) (holding that contract with provision permitting injured party to obtain judgment against defaulting party without notice or hearing does not offend Due Process Clause); *Colson*, 412 A.2d at

1164, 1165 n.8 (concluding that guilty plea to criminal offense acts as waiver of right to litigate same factual issues before Board). There even is support in Supreme Court case law for the proposition that in some circumstances one may waive a constitutional right without realizing the full extent of the consequences. *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218, 235-36 (1973) ("Our cases do not reflect an uncritical demand for a knowing and intelligent waiver in every situation where a person has failed to invoke a constitutional protection . . . . [*Overmyer*] explicitly [left] open the question whether a knowing and intelligent waiver need be shown."). We need not resolve that issue, however, because both Florida and District of Columbia case law put Richardson on clear notice of what the consequences of his resignation from the Florida bar would be for reciprocal discipline proceedings elsewhere.

Florida long has regarded a resignation from its bar pending disciplinary charges as a form of discipline that will trigger reciprocal discipline in another jurisdiction. Indeed, the Florida Supreme Court has compared the acceptance of such a resignation to acceptance of a plea bargain. *See In re Brush*, 358 So. 2d 1355, 1357 (Fla. 1978). The court made clear in *Brush* that the attorney must accept the terms and consequences of the resignation, however harsh or unforeseen, because of "the potential harm to the public inherent in the halt of disciplinary proceedings which results from the acceptance of a resignation while those proceedings are pending." *Id.*; *cf. Colson*, 412 A.2d at 1164, 1167 (holding that guilty plea waives opportunity to contest underlying facts). Thus, Richardson was deemed to know, in Florida, that his resignation effectively invited all disciplinary consequences that could flow, in Florida and elsewhere, from his failure to invoke his right to an evidentiary hearing in the disciplinary proceeding his resignation aborted.

Furthermore, this court previously has imposed reciprocal discipline on Richardson himself for the same kind of conduct

(charging an excessive fee) he was accused of — and resigned rather than litigate — in Florida. *See In re Richardson*, 602 A.2d 179, 182 (D.C. 1992) (per curiam) (ninety-one day suspension). Richardson therefore cannot plead ignorance of the workings of our own reciprocal discipline system.

Accordingly, in light of the case law available to Richardson in the jurisdictions where he has been admitted to the bar, he cannot claim ignorance of the potential consequences of his resignation. *See Drury*, 638 A.2d at 63 n.12 (noting that case law provides adequate notice of possibility of greater sanction on reciprocal discipline); *cf. In re Hines*, 482 A.2d 378, 386 (D.C. 1984) (per curiam) (adopting recommendation of lesser sanction but "notifying" bar that same action will have more serious consequences in future). Because Richardson was on clear notice of the consequences in the District of Columbia of his resignation/ suspension from the Florida Bar, his waiver of an evidentiary hearing in Florida — which would have served as the due process hearing required for reciprocal discipline here — was also a waiver of an evidentiary hearing for District of Columbia purposes.

Richardson in any event was entitled to a hearing under Rule XI § 11 (c), which affords an opportunity to avoid reciprocal discipline by demonstrating, for example, that "[t]he procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process," D.C. Bar R. XI § 11 (c)(1), or that "[t]here was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject," D.C. Bar R. XI § 11 (c)(2). Richardson, however, declined the opportunity to make such showings and, therefore, should not be heard to ask for that opportunity here.

D.

Richardson contends, however, that our rules requirement, D.C. Bar R. XI § 11 (c), that the respondent attorney has the

burden to show cause why we should not impose reciprocal discipline impermissibly shifts the burden of persuasion to the respondent. He maintains that this violates both his due process and equal protection rights, because it irrationally distinguishes between lawyers charged in a foreign jurisdiction and lawyers charged in the District. Specifically, Richardson argues that the Equal Protection Clause is implicated here because D.C. Bar R. XI § 11 (d) shifts the burden of persuasion to the respondent attorney, whereas in other cases Bar Counsel has the burden to sustain the charges by clear and convincing evidence. *See In re Williams*, 464 A.2d 115, 119 (D.C. 1983) (per curiam).

These arguments have no merit whatsoever. The Supreme Court explicitly has endorsed this burden-shifting practice. *See In re Isserman*, 345 U.S. at 289 ("Our rule puts the burden upon respondent to show good cause why he should not be disbarred."). It is not irrational to shift the burden of persuasion to attorneys who have already been disciplined in a foreign jurisdiction and face charges of reciprocal discipline, while placing that burden on Bar Counsel when charging attorneys with misconduct for the first time. *See Velasquez*, 507 A.2d at 147. Richardson's due process and equal protection challenges accordingly fail.[3]

VI.

Having found Richardson's exceptions unpersuasive, we consider the sanction drawn from Florida and recommended by the Board: a three year suspension with reinstatement conditioned upon proof of fitness. Like the Board, we are troubled by the fact that a three year suspension exceeds the outside range of discipline typically imposed for a single in-

---

[3] Richardson argues that the Board resorted to information outside the record. We find no evidence that the Board considered facts other than Richardson's own submissions and the contents of his Florida disciplinary file forwarded by the Florida Bar to Bar Counsel and properly submitted to the Board.

(Footnote continued on next page.).

stance of charging an excessive fee. *See In re Landesberg*, 518 A.2d 96, 97 (D.C. 1986) (sixty day suspension); *In re Waller*, 524 A.2d 748, 751 (D.C. 1987) (thirty day suspension); *see also In re Ray*, 675 A.2d 1381, 1387 (D.C. 1996) (six month suspension and refund of all fees to client when illegal fee coupled with negligent misappropriation); *In re Knust*, 598 A.2d 434 (D.C. 1991) (per curiam) (six month suspension for excessive fee coupled with two other disciplinary violations on reciprocal discipline). In support of imposing this heavy sanction, however, the Board noted that Richardson previously has been the subject of reciprocal discipline for the same type of conduct and received a ninety-one day suspension in this jurisdiction. *See Richardson*, 602 A.2d at 180. Moreover, the Board cited the strong presumption in favor of reciprocal discipline. *See In re Zilberberg*, 612 A.2d 832, 834 (D.C. 1992). Finally — and of considerable significance as we see it — the Board observed that Richardson had made no substantive argument that the proposed suspension was excessive. *See* D.C. Bar R. XI § 11 (c)(3), (4) (respondent may prevent imposition of the same discipline by showing that imposition of same discipline would result in grave injustice or that conduct warrants substantially different discipline in District of Columbia). In the absence of any proffered basis for a lesser sanction, therefore, the Board found no reason not to impose reciprocal discipline.

---

[3] (Continued)

He also claims that he had no opportunity to respond to Bar Counsel's opposition to his motion to dismiss. Richardson was not constitutionally entitled to rebut Bar Counsel's opposition, because he already had been granted "the right to be heard" in Florida and declined the opportunity. *Loudermill*, 470 U.S. at 546. No Constitutional requirement guarantees that respondent must have the last word. In any event, Richardson suffered no prejudice as a result of this lack of opportunity to respond before the Board because he has had the opportunity to respond to all of Bar Counsel's arguments in his brief before this court. We also note that Richardson has taken the opportunity to file many motions, both before us and before the Board, addressing all of his arguments.

"A recommendation of the Board on Professional Responsibility with respect to a proposed sanction comes to us with a strong presumption in favor of its imposition." *In re Goffe*, 641 A.2d 458, 463 (D.C. 1994) (per curiam). "While the ultimate choice of a sanction rests with this court, our rule requires us to respect the Board's sense of equity in these matters unless that exercise of judgment proves to be unreasonable." *In re Ryan*, 670 A.2d 375, 380 (D.C. 1996) (citation and internal quotation marks omitted). We cannot say that the Board's exercise of judgment here was unreasonable. We also note that Richardson has failed to file, during the course of his interim suspension, the required affidavit under D.C. Bar R. XI § 14 (g). We therefore defer to the Board's sense of equity and adopt the recommended discipline, including the requirement that Richardson shall not be eligible for reinstatement until three years after he complies with his responsibilities under this rule. *See In re Slosberg*, 650 A.2d 1329, 1331-32 (D.C. 1994).[4]

So ordered.[5]

---

[4] In *Richardson*, we deemed respondent to have served the term of his suspension nunc pro tunc from that date we imposed his interim suspension, despite his failure to file the required affidavit until nearly three months later. *See Richardson*, 602 A.2d at 181-82. We note that at that time we did not invariably draw a suspended attorney's attention to the appropriate rule. *See In re Gardner*, 650 A.2d 693, 697 n.7 (D.C. 1994). In the present case, Richardson received notice in the interim suspension order date June 27, 1995, of D.C. Bar R. XI § 14, and the potential impact on the timing of eligibility for reinstatement of a failure to comply. Accordingly, there is no reason not to apply the rule set forth in *Slosberg*.

[5] On January 23, 1996, Bar Counsel notified this court pursuant to D.C. Bar R. XI § 11 (b), (d), that the United States Court of Appeals for the District of Columbia Circuit had disbarred Richardson as reciprocal discipline based on his Florida resignation. On March 12, 1996, we ordered the Board to determine whether reciprocal discipline was warranted based on this federal court of

(Footnote continued on next page.)

A true Copy
Test:

Garland Pinkston, Jr.
Clerk of the District of Columbia Court
of Appeals

BY _____
DEPUTY CLERK

---

5 (Continued)

appeals disbarment. This order was designated a part of Board Docket No. 24-96 and combined with this Appeal, No. 95-BG-639. In its report, the Board recommended dismissing this second reciprocal complaint, and Bar Counsel has taken no exception to this recommendation. We therefore order the second reciprocal action, Board Docket No. 24-96, dismissed.

D. Order Denying Rehearing Petition (11/10/97).

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-639

FILED
NOV 10 1997

In the Matter of
T. CARLTON RICHARDSON, ESQUIRE
A Member of the Bar of the
District of Columbia Court of
Appeals

BDN: 180-94

BEFORE: Wagner, Chief Judge; Terry, Steadman, Schwelb, Farrell, *+King, Ruiz, and *Reid, Associate Judges; and *Gallaher, Senior Judge.

O R D E R

On consideration of respondent's petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing be denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

+Former Associate Judge Ferren was a member of the division that heard oral argument in this case. After his departure from the court, Associate Judge King was selected by lot to replace him.

II. STATUTORY PROVISIONS INVOLVED (CONSTITUTION, STATUTES, REGULATIONS/RULES)

A. Federal Constitution.

Article IV, Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

5th Amendment

No person shall ... be deprived of life, liberty, or property, without due process of law; ...

14th Amendment, Section 1.

... No state shall ... deny to any person within its jurisdiction the equal protection of the laws.

B. State Statutes.

D.C. Code Sec. 11-2501(a)

The District of Columbia Court of Appeals shall make such rules as it deems proper respecting ... suspension ... [of D.C. Bar members].

D.C. Code Sec. 11-2503(b)

[Except upon conviction of a crime], a member of the bar may not be ... suspended ... under this chapter until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of the complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the

charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon him by mail, publication, or otherwise, as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof. (Emphasis supplied.) §Note: The preceding underline portion of the statute has been "construed as to require both notice and a hearing before suspension even though the notice and the hearing be informal and speedy." Laughlin v. Wheat, 95 F.2d 101, 102 (U.S. App. D.C., 1937) (Per Curiam); Accord, In re Cummings, 466 A.2d 1124 (D.C., 1983 ["(S)ome kind of notice and a hearing must be afforded before an attorney may be suspended."]†

C. State Bar Regulations

D.C. Bar Rule XI, Section 3(c)

(c) Temporary suspension or probation. (1) On petition of the Board [on Professional Responsibility] authorized by its Chairperson or Vice Chairperson, supported by an affidavit showing that an attorney appears to pose a substantial threat of serious harm to the public, the Court may issue an order, with such notice as the court may prescribe, temporarily suspending the attorney or imposing temporary conditions of probation on the attorney, or both. ... An order of temporary suspension issued under this subsection shall preclude the attorney from accepting any new cases or other legal matters, but shall not preclude the attorney from continuing to represent existing clients during the thirty-day period after issuance of the order; however, any fees tendered to the attorney during that thirty-day period or at any time thereafter while the temporary suspension is in effect shall be deposited in a trust account, from which withdrawals may be made only as directed by the Court.

(2) Where issues of fact appear to be presented by the Board's petition or by any response of the attorney, the Court may appoint a special master to preside at a hearing at which evidence will be presented concerning the petition. The master shall prepare a report summarizing the evidence presented and make recommended findings of fact which, together with the record, shall be filed with the Court within fifteen days of the Court's order of appointment.

Rule XI, Section 11 (d)

Temporary suspension and show cause order. Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal proceeding, and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days. [Emphasis supplied]

D.C. Bar Rule XI, Section 11(e)

Recommendation by Board. Promptly after the attorney's response to the order to show cause is filed or, if no response is filed, promptly after the time for filing a response has expired, the Board shall recommend to the Court whether reciprocal discipline should be imposed. If no order to show cause has been issued, the Board shall recommend to the Court whether reciprocal discipline should be imposed promptly after receiving a certified copy of an order demonstrating that an attorney subjected to professional disciplinary action, other than suspension or disbarment, by a disciplining court outside the District of Columbia or by another court in the District of Columbia. A copy of the Board's recommendation shall be served on the attorney. If the Board recommends to the Court that reciprocal discipline be imposed, the attorney may file with the Court, within thirty days after service of the Board's recommendations, an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted. [Emphasis supplied]